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1 continuously, with Barry Bressler; to some  
2 extent with Wil Kipnes and these financial  
3 advisors. They were concerned and I was  
4 concerned. I guess Jeffrey Pearlman was  
5 concerned that if we did that, we would  
6 very seriously jeopardize the condition of  
7 the company over a short-run period when  
8 our main goal was trying to resolve this  
9 bankruptcy or else sell the company.

10 (Trustee-7, a letter dated  
11 May 9, 2002, marked for identification.)

12 BY MR. LEVY:

13 Q. Trustee-7 is the next exhibit. This  
14 is a letter sent by me and my partner to  
15 you dated May 9, 2002. Do you remember  
16 receiving that letter?

17 A. I think I recall it.

18 Q. When you got this letter in which we  
19 asked you -- well, first, let me ask you  
20 this: Will you agree that this was not the  
21 first time that the Equity Committee or its  
22 representatives had requested that you  
23 remove Dan Crowley?

24 A. I think you are probably right, but

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1 I can't be positive of that. If you say  
2 it, I accept your statement. But, I don't  
3 recall it.

4 Q. In this letter, we suggested the  
5 name of three potential crisis managers.  
6 Did you consult any of those three we  
7 recommended at that time?

8 A. I did not.

9 Q. Did you consult anybody else at that  
10 time?

11 A. I had these discussions that I have  
12 talked to you about today.

13 Q. When you talked to Jeff Pearlman and  
14 he said be careful that is, essentially,  
15 about whether or not replacing Crowley, did  
16 he indicate that there was anything special  
17 about Coram that required special care in  
18 not replacing the CEO?

19 A. I don't think he discussed anything  
20 special about Coram. He was thinking about  
21 the health care industry.

22 Q. You are familiar with the fact,  
23 aren't you, that in recent, in the recent  
24 year or two, some very large companies that

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1 have gone into bankruptcy have immediately  
2 fired their CEOs?

3 A. Yes.

4 Q. For example, you probably read this  
5 morning's Wall Street Journal that the  
6 world's third largest retailer fired its  
7 CEO and CFO because there was some  
8 potential accounting irregularity?

9 A. That is not a bankruptcy context.

10 Q. That's true. Did you read that?

11 A. Yes.

12 Q. You know that WorldCom fired its  
13 chief executive officer when they filed  
14 what is the world's largest Chapter 11?  
15 You are aware of that?

16 A. I have read about it.

17 Q. Did you consider the possibility  
18 that, perhaps, Mr. Pearlman and your other  
19 advisors were wrong in that Coram would  
20 survive very well with the crisis manager,  
21 notwithstanding a replacement of Dan Crowley?

22 A. Of course.

23 Q. Did you ever consult a crisis  
24 manager, someone experienced in this field,

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1 and say something on the order of I'm  
2 concerned if I put you in there, it will  
3 destroy the company? What has your  
4 experience been?

5 A. I never did.

6 Q. Why?

7 A. I was not looking at this situation  
8 as a long-term situation such as WorldCom  
9 or AHold (phonetic). As I have said  
10 repeatedly this morning, I thought my job  
11 was to try to get this company out of  
12 bankruptcy as promptly as possible and I  
13 didn't want to shake the foundations before  
14 that could be done. Now, maybe I was  
15 wrong. I don't think I was. If anybody  
16 can prove that to me, I will cheerfully  
17 step down. I don't need this job. I  
18 didn't seek the job. All I can use is my  
19 best judgment. I tried to do it.  
20 Apparently, I have satisfied most of the  
21 people, except you and Don and I'm sorry  
22 about that. I would have loved to have  
23 satisfied you. Through my professional  
24 life, I have been able to satisfy most

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1 people. Certainly with my integrity, which  
2 you seem to be attacking this morning,  
3 which concerns me very greatly, but that is  
4 your job and if I can't do this job, I will  
5 cheerfully step down and I will tell that  
6 to the Trustee as I am doing right now  
7 because his representative is here. But,  
8 it's your judgment against my judgment and  
9 although I respect your judgment, I have to  
10 adhere to my best judgment.

11 Q. Of course you do. I am not and  
12 never have attacked your integrity. I  
13 understand that there could be a difference  
14 of opinion as to whether there should be a  
15 crisis manager.

16 My point, sir, is, and just  
17 confirm this for me, you never consulted  
18 anyone other than Mr. Pearlman and your  
19 lawyers here about whether their views as  
20 to whether a crisis manager would have  
21 upset the apple cart here?

22 MR. NEUWIRTH: Objection.

23 THE WITNESS: That is true.

24 The reason is because I had gone on the

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1 premises and had interviewed all the  
2 executives individually and became  
3 convinced, perhaps incorrectly, that the  
4 best way to preserve value here was  
5 continuing until we could have a plan.  
6 Now, maybe I'm incorrect, but that is my  
7 best judgment.

8 Q. Roughly, how many executives did you  
9 interview and for what purpose?

10 A. We used to have a list. I would say  
11 twelve, thirteen.

12 Q. Did any one of those executives tell  
13 you or suggest to you that if Crowley was  
14 replaced by a crisis manager, they would  
15 quit?

16 A. No. But what they suggested is if  
17 we disturb the operation, it would hurt the  
18 morale and some of them would quit.

19 Q. Who said they would quit?

20 A. I didn't say that. They said that  
21 some of the colleagues would quit.

22 Q. Not the twelve you interviewed, but  
23 someone else?

24 A. No. Among those, but they didn't

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1 put their finger on it.

2 MR. BEATIE: You

3 consistently misstate his testimony. Is  
4 it a professional preference?

5 THE WITNESS: One would say  
6 if you disturb this situation, you run  
7 the risk that some of our colleagues may  
8 seek a different assignment.

9 BY MR. LEVY:

10 Q. One of them said that to you and did  
11 you say, well, Joe over here says some  
12 people may quit. Are you one of the people  
13 who would quit?

14 A. No. I never did ask.

15 Q. Why?

16 A. Because I didn't do it. That's not  
17 my style. That may be your style. It's  
18 just not my style.

19 Q. What advice did you get from your  
20 lawyers here about whether replacing  
21 Crowley would cause a problem in the  
22 company?

23 A. Would cause?

24 Q. A problem at Coram.

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1 A. They said we have to be very careful  
2 of doing that.

3 Q. Did they explain to you why they  
4 thought so?

5 A. They talked to the executives, too.  
6 They talked to these various executives  
7 from time to time and they are aware that  
8 it is a very ticklish situation?

9 Q. Did they -- who are we talking  
10 about? Mr. Bressler? Kipnes? Devine?

11 A. Yes.

12 Q. Did any executive ever say that if  
13 you replace Crowley with a crisis manager,  
14 I'm going to look for another job?

15 A. No, I don't think any of them said  
16 that.

17 Q. Nobody ever said that to you?

18 MR. MILLER: Objection. He  
19 testified a few minutes ago that people  
20 in Denver told him that.

21 THE WITNESS: Nobody said if  
22 you bring in a crisis manager, I will  
23 resign. Nobody said that.

24 Q. Nobody ever specified who, what



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1 other persons might resign if you bring in  
2 a crisis manager?

3 A. Nobody named any such person..

4 MR. BEATIE: Number five.

5 BY MR. LEVY:

6 Q. Do you remember meeting with Sam  
7 Zell?

8 A. I do.

9 Q. Did you have a discussion with him  
10 about replacing Crowley with an independent  
11 crisis manager?

12 A. I don't know whether that got into  
13 our discussion. It may have. I don't have  
14 any precise recollection of that. I know  
15 that we had a very nice discussion. I have  
16 great respect for him. We developed a  
17 very, I thought, good relationship in that  
18 very limited period of time. I thought  
19 Mr. Zell was primarily interested in what  
20 amount the shareholders could get in a  
21 resolution of the problem. I respected  
22 that. He was an investor; and although he  
23 had already achieved a great profit by that  
24 time, I think he allowed as much -- I was

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1     trying to get for him and his colleagues  
2     who were fellow shareholders the maximum  
3     amount. That is a primary goal of mine.  
4     So, we really were not very far apart on  
5     that. I thought that the figure that he  
6     had in mind was an unrealistic figure, but  
7     he is a good salesman and I recognize that  
8     and I was perfectly prepared to do the best  
9     I could for him and his colleagues. We  
10    left on the most of cordial terms. He  
11    wrote me a letter afterwards, which I  
12    thought was a very nice letter which kind  
13    of restated what he had told me. And if  
14    you have it in front of you, it will  
15    refresh my mind. I don't remember everything  
16    he said.

17           Q. That's the letter which we will mark  
18    as number 8. It is Trustee number 6432.

19                   (Trustee-8, a letter dated  
20    September 17, 2002, marked for  
21    identification.)

22                   THE WITNESS: I forgot when  
23    he visited me, we had been talking about  
24    a draft of a complaint that you and your

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1 colleagues had developed which we were  
2 giving a great deal of attention to and  
3 I mentions that in the letter.

4 Q. It was the Complaint that we  
5 presented to you on May 7.

6 A. Correct. I don't know the date.  
7 Thereabouts.

8 Q. You said to us at that meeting that  
9 is a very good Complaint and would probably  
10 pass a motion to dismiss.

11 MR. KIPNES: Objection to  
12 the question. Beyond, well beyond the  
13 scope. This letter from Mr. Zell, I  
14 believe, is eight days before a  
15 mediation.

16 MR. LEVY: I'm talking about  
17 May.

18 MR. KIPNES: You are not  
19 talking about Mr. Crowley.

20 MR. LEVY: I think I am.

21 THE WITNESS: You are saying  
22 at the meeting I had made a comment that  
23 it was a pretty good complaint and it  
24 may very well be able to survive Summary

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1 Judgment?

2 Q. Yes.

3 A. I don't deny that. I don't recall  
4 that I said it. It sounds like --

5 MR. GODNICK: The question  
6 was with regard to a motion to dismiss,  
7 notwithstanding the objectionable nature  
8 of the question, not with respect to  
9 Summary Judgment.

10 THE WITNESS: Okay. I don't  
11 recall that.

12 MR. KIPNES: In no event  
13 does any of this have anything to do  
14 with what we are here for today.

15 MR. MILLER: That is true of  
16 most of the questions today.

17 BY MR. LEVY:

18 Q. This letter you got from Sam Zell,  
19 does it pretty much accurately reflect what  
20 went on at the meeting?

21 A. He is not a lawyer. He is a very  
22 good businessman. I don't know that it's  
23 word-for-word. In substance, it reflects  
24 what we talked about. Is he a lawyer?

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1 Yes, I guess he did tell me he had gone to  
2 law school. I beg your pardon.

3 Q. He is proud of that. He practiced  
4 for six months.

5 MR. GODNICK: Could we have  
6 a question, please?

7 BY MR. LEVY:

8 Q. Does it now refresh your recollection  
9 that Mr. Zell did ask that Mr. Crowley be  
10 removed as CEO?

11 A. That does refresh my recollection.

12 Q. You, at that point, raised the  
13 question of available management should you  
14 terminate Crowley?

15 A. He said he thought that you either  
16 had given me names or were about to give me  
17 names. And, I think, the fact is you had  
18 submitted names. That's my recollection.  
19 I may be wrong on the timing of it.

20 Q. Did you at that meeting, when he  
21 suggested you terminate Crowley, say in  
22 substance that if you did, it would make  
23 Goldman Sachs very angry?

24 A. No, never said anything like that.

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1 Q. Nothing like that?

2 A. No. I told him at the time that  
3 there was a feeling that he had some, that  
4 there was some tension between Goldman  
5 Sachs and himself. And he went on and  
6 explained the past relationship that he had  
7 with Goldman Sachs dealing with the  
8 property at Radio City and that a person  
9 who is known to both of us was involved

10

11

12

13 Q. That would be?

14 A. If I heard his name, I could tell  
15 you.

16 MR. KIPNES: Does it start  
17 with an L?

18 THE WITNESS: Lindeman.

19 Peter is the first name.

20 BY MR. LEVY:

21 Q. Did you ever consider, ever consider  
22 getting rid of Crowley and filling the  
23 position from within the company?

24 A. We did, yes. We did. That was one

1 of the options that we considered.

2 Q. When did you consider that?

3 A. I can't tell you the date. I  
4 remember talking with Barry Bressler about  
5 the qualifications of Marabito who was  
6 right below Crowley and we were concerned  
7 that he did not have the same skills that  
8 Crowley had in trying to keep the  
9 organization together.

10 Q. That was Mr. Bressler's view?

11 A. I don't know whether it was Mr.  
12 Bressler's view or Joe Devinc's view. It  
13 was a concern.

14 Q. When you asked for their views, you  
15 were not seeking legal advice?

16 A. No.

17 Q. Did anybody ever, did somebody  
18 suggest to you that you should consider  
19 filling it from within?

20 A. No, I think that idea came from me.

21 Q. From you. Let's see if I can  
22 refresh your recollection on that.

23 (Trustee-9, a memorandum  
24 from Mr. Weber and Mr. Bemiss to Barry

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1 Bressler, marked for identification.)

2 BY MR. LEVY:

3 Q. The next document, Exhibit 9, is a  
4 memorandum from SSG Capital Advisors. I'm  
5 sorry, actually from Michael Weber and Sam  
6 Bemiss at EMB & Company addressed to Barry  
7 Bressler. It Bates numbered 6323 through  
8 25. It is addressed to Bressler. I take  
9 it, you have seen it?

10 A. I think he came in and discussed it  
11 with me.

12 Q. Why on October 28 were your  
13 financial advisors giving you suggestions  
14 for an executive who could potentially step  
15 into an interim and possible permanent role  
16 at Coram Health Care?

17 MR. GODNICK: Objection.

18 A. We had taken Sam Zell's suggestions  
19 seriously. We had taken -- Don, your  
20 colleague, had been persistent in that  
21 point of view. We took it very seriously.  
22 We discussed it with those two gentlemen  
23 whose name appear on this exhibit plus the  
24 other people I have talked about. They



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1     responded with this document. It is  
2     addressed to Barry Bressler because they  
3     had a better relationship with him than  
4     with me from prior to this situation. He  
5     came in and discussed it. That's how it  
6     evolved. We always took what you said  
7     seriously.

8           Q. And did you discuss with your  
9     financial advisors at that time after you  
10    got this memo whether taking one of their  
11    suggestions here would cause problems at  
12    Coram?

13          A. I think at this time this was a  
14    different consideration. My recollection  
15    is that at this particular time, we were  
16    trying to develop a plan and, I think, we  
17    were hopeful of filing such a plan in  
18    January. If I'm not mistaken and this  
19    is -- what is the date of this? This is  
20    October 28, practically November 1st. So,  
21    we are talking about November and December.  
22    To make a change for two months, we were  
23    going to have a plan in January, and it  
24    just didn't seem to be practical or

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1 sensible, so we put it aside.

2                   It developed that because of  
3 certain things that you have done, that has  
4 been delayed. We now think we can fill a  
5 plan in March, but we can't just at this  
6 time thinking of, whereas meeting the  
7 suggestions that you and the equity people  
8 have, you are only a piece of the action,  
9 you are an important piece, but there is a  
10 company to run. There are creditors,  
11 Noteholders. And it's my job to consider  
12 the entire mosaic. You disagree with the  
13 way I have done it. You are entitled to  
14 that opinion. You are entitled to more  
15 than that. You are entitled to move to  
16 have me removed and I think, frankly, you  
17 ought to do that.

18           Q. What did I, myself, do to delay your  
19 filing of a plan?

20           A. Well --

21                   MR. KIPNES: We are really  
22 far afield from Mr. Crowley. If it's  
23 following up on what Judge Adams said,  
24 well, it's got nothing to do with

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1 Mr. Crowley.

2 MR. LEVY: Please.

3 THE WITNESS: I think you

4 filed a plan.

5 BY MR. LEVY:

6 Q. Did that delay you?

7 A. Well, I think you and Don and your  
8 colleagues have used up a lot of the time  
9 of our people. I think far more than  
10 anyone else. We can't do everything. I  
11 have tried desperately to keep our expenses  
12 to a minimum. And I still interpret your  
13 questions, perhaps incorrectly, as an  
14 attack on me and what I have done and what  
15 I do on a day-to-day basis. I cannot  
16 satisfy the points that you are making.  
17 It's beyond me. I can't do it. If the  
18 judge agrees with you and the Trustee  
19 agrees with you, I have said several times,  
20 I will cheerfully withdraw.

21 Q. Do you know why as your financial  
22 advisors prepared these suggestions that  
23 are in Exhibit 9, do you know why did they  
24 write this

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1 MR. GODNICK: Asked and  
2 answered.

3 THE WITNESS: I'm sure that  
4 we discussed the matter with him.

5 BY MR. LEVY:

6 Q. In October, the end of October, when  
7 you thought you were going to file a plan  
8 two months later, tell me if I'm  
9 understanding you correctly, you asked them  
10 to give you suggestions for someone who  
11 could step into an interim role?

12 A. I think this came from before  
13 October. We were talking to them. I think  
14 when we first interviewed these people, I  
15 guess, in June, I don't remember the date,  
16 several months before this, that was one of  
17 the questions that I put to them. Why did  
18 they write that on this date? I can't tell  
19 you.

20 Q. Did you ever discuss with your  
21 investment advisors their views as to  
22 whether replacing Crowley would cause  
23 problems at Coram?

24 A. Yes, we did. We did. They went

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1 further. They said if you are thinking in  
2 terms of selling the company -- that was  
3 one of the discussions. That was an  
4 extensive discussion. That will hurt any  
5 attempt at same.

6 Q. Who said that?

7 A. I think Victor. What is Victor's  
8 name?

9 Q. Scott Victor?

10 A. Scott Victor.

11 Q. He said it to you?

12 A. He said it at the meeting. He  
13 didn't say it just to me.

14 Q. What meeting?

15 A. We had a meeting with them.

16 Q. When? Who was there?

17 A. I can't tell you when.

18 Q. About when?

19 A. I would say September, but I'm just  
20 guessing. I don't know the date of the  
21 meeting.

22 Q. Can you tell me who was there?

23 A. I'm sure Barry Bressler was there.

24 I don't know whether Wil Kipnes was there.

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1 MR. KIPNES: I was not.

2 THE WITNESS: I think

3 Mr. Devine was there. One of your other  
4 associates was there, Farkasie. I can't  
5 remember everybody's name.

6 MR. KIPNES: The potential  
7 sale of the company has what to do with  
8 Mr. Crowley?

9 BY MR. LEVY:

10 Q. In Exhibit 9 --

11 MR. MILLER: Is that what  
12 this deposition is about?

13 Q. Your investment advisors talked  
14 about the reasonable depth of some  
15 management talent at Coram. Do you agree  
16 that Coram has reasonable depth of  
17 management talent?

18 A. I think it's pretty good, yes. I  
19 thought it was pretty good.

20 Q. Did you, as they suggested after  
21 looking inside, did you look outside the  
22 home health care industry for CEO talent?

23 A. Did I look?

24 Q. Did you or did you cause anyone on

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1 your behalf to?

2 A. No. But I was completely open to  
3 that. I didn't think that that was out of  
4 the line, out of line.

5 Q. What did you do about it? Did you  
6 tell -- did you say to one of your people  
7 let's go look outside?

8 A. No, because I was concentrating, I  
9 have said this time and time again, at that  
10 time I was concentrating on filing a plan  
11 in January. Now, could I have concentrated  
12 on filing a plan and looking more? Yes, I  
13 guess so. If I had an unlimited amount of  
14 time and wanted to spend money, I could  
15 have done that.

16 Q. How about spending the equity  
17 from --

18 A. Exactly. You are exactly right.

19 (Luncheon recess taken,

20 12:30 p.m.)

21 (Afternoon session, 1:08

22 p.m.)

23 BY MR. LEVY:

24 Q. Mr. Adams, I wonder if you would

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1 repeat on the record what you just said  
2 about Exhibit 9.

3 A. Yes, sir. Near the end of the  
4 morning session, Mr. Levy, you were asking  
5 me some questions about Trustee's Exhibit 9  
6 dated October 28, 2002. I think you were  
7 wondering how that developed timewise. In  
8 thinking about it at lunch, I recall that  
9 we were, once again, considering a  
10 substitution for Mr. Crowley because we  
11 knew that his contract was going to expire,  
12 I think, November 30. I may be wrong on  
13 that.

14 Q. The 29th.

15 A. Yes.

16 Q. Thank you.

17 I will change subjects now.  
18 Let me just review very briefly. Did I  
19 understand correctly that after your  
20 meeting with Crowley that on March 25, 26,  
21 that at that point in time, you had come to  
22 the conclusion that Crowley did not have a  
23 conflict?

24 A. Pretty much I had come to that



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1 conclusion based on his questions. There  
2 was one other thing that took place at that  
3 meeting that I thought about and that is my  
4 discussion with him about Cerberus, I hope  
5 I'm not mispronouncing it. He did say that  
6 from time to time they would ask him to  
7 evaluate situations, and I said, "Do they  
8 compensate you for that?" He said, "No."  
9 I said, "Well, if it has nothing to do with  
10 Coram, they are not competitors of Coram,  
11 they in no way impact on Coram, and you do  
12 that off company time, I don't think I  
13 would object to that." He said, "Well, of  
14 course." Some discussion like that.

15 Q. Let me be clear. One of the  
16 conditions was that he not be compensated  
17 for --

18 A. That's what I said.

19 Q. That what you said to him?

20 A. That's right.

21 Q. Did he agree that he would not be  
22 compensated or seek compensation if he did  
23 that kind of work?

24 A. Yes. He said, "Oh, I understand. I

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1 understand." Something like that.

2 Q. I think you said you had pretty much  
3 come, subject to what you just said, you  
4 said that at that meeting or at the  
5 conclusion of that meeting you had pretty  
6 much come to a conclusion that at that  
7 point in time he had no conflict?

8 A. That's correct.

9 Q. "Pretty much" is less than  
10 completely. Could you help me and tell me  
11 what reservations you had at that point?

12 A. Well, some of the reservations that  
13 you pointed out. After all, I didn't know  
14 this gentleman. This was the first time I  
15 had met him face-to-face. He wasn't giving  
16 me anything in writing, not that I asked  
17 him for anything in writing. He was  
18 speaking orally, of course, and I was going  
19 to go back and talk to Barry Bressler, my  
20 counsel, which I did.

21 Q. What did you say to Barry?

22 A. Exactly what had happened; just what  
23 I have told you this morning.

24 Q. What did Barry say?

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1 A. He has to speak for himself.

2 MR. GODNICK: A business  
3 conversation or --

4 MR. LEVY: That is an  
5 improper objection.

6 BY MR. LEVY:

7 Q. Go on.

8 MR. KIPNES: It's not an  
9 improper objection. But unless you want  
10 to give me the stipulation I asked you  
11 to give me so that we could speed things  
12 along --

13 MR. BEATIE: Not only is it  
14 not improper, it's in the rules for a  
15 change that --

16 MR. LEVY: The fact that  
17 these questions are being answered at  
18 this deposition does not itself  
19 constitute a waiver.

20 MR. KIPNES: You will not so  
21 assert? That's what I asked you for.  
22 That's fine. Go ahead.

23 THE WITNESS: I really can't  
24 tell you accurately how that

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1 conversation ended, except to say that  
2 we were prepared to let the situation  
3 alone, at least for that time being, let  
4 it alone for that period of time. That  
5 is not a very accurate description  
6 sitting here. That is about the best I  
7 can say.

8 Q. Did you rely on what Barry told you,  
9 at least in part, in making the decision?

10 A. In part. But I was relying on my  
11 own judgment as well. I have the utmost  
12 confidence in Mr. Bressler, but I want to  
13 make it clear that these judgments I'm  
14 responsible for.

15 Q. Now, when you made -- this is a  
16 December 27 letter signed by both Dan  
17 Crowley and Steve Feinberg. We will mark  
18 that as number 10.

19 (Trustee Exhibit 10, a  
20 letter dated December 27, 2001, marked  
21 for identification.)

22 BY MR. LEVY:

23 Q. There are two copies and they have  
24 different production numbers.

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1 MS. KRUGMAN: Can you just  
2 identify those Bates numbers for me,  
3 please?

4 MR. LEVY: CRX 607 and 752.

5 MS. KRUGMAN: Thank you.

6 BY MR. LEVY:

7 Q. My question, Mr. Adams is: At the  
8 time you had, I think you said pretty much  
9 come to the conclusion that there was no  
10 ongoing conflict, were you aware that on  
11 December 27, Feinberg and Crowley had  
12 agreed to suspend their contract for one  
13 month, that is, January of 2002, and that  
14 they had agreed that the suspension will  
15 end on January 31st, 2002? Were you aware  
16 of that?

17 A. I was not aware of this exhibit,  
18 10. Nobody told me about the contents of  
19 this exhibit.

20 Q. You had never known about it until I  
21 handed it to you just a moment ago?

22 A. I didn't see this letter until  
23 today, to my knowledge.

24 Q. Do you draw a distinction in your

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1 mind between suspending a contract and  
2 terminating a contract?

3 A. I guess if there is a distinction,  
4 if you terminate it, it's ended, period.  
5 If you suspend it, it's held in kind of  
6 abeyance. I have not looked up the  
7 definition, but something like that.

8 Q. Held in abeyance meaning?

9 A. For the future.

10 Q. So, would it be your understanding  
11 looking at this letter now what these  
12 parties intended is that they were holding  
13 their contract for the future, that is,  
14 after January 31st?

15 A. I don't know what they had intended.  
16 I never saw it. I really don't have a  
17 conclusion on that document.

18 Q. Do you think if you would had seen  
19 this when you reached your conclusion on  
20 March 25 or 26 that, or your conclusion  
21 that you felt pretty much, that you felt  
22 there was no conflict, do you think it  
23 might have affected that decision?

24 MR. GODNICK: Objection.

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1 THE WITNESS: I think it  
2 would have affected the decision to the  
3 extent that I would have asked for a  
4 clarification.

5 Q. What clarification do you think you  
6 would have?

7 A. I would have asked what does this  
8 document mean.

9 Q. Because of the use of the word  
10 suspension?

11 A. Correct.

12 Q. The next document is a January 29th  
13 letter, also signed by Dan Crowley and  
14 Steve Feinberg. This one has the Bates  
15 number CRX 00754. Mr. Adams, you should  
16 understand that means it was produced by  
17 Dan Crowley's lawyers.

18 (Trustee-11, a letter dated  
19 January 29, 2002, marked for  
20 identification.)

21 THE WITNESS: That's the  
22 same as 10, that exhibit. It changes  
23 the month.

24 Q. Correct. Can I assume you were not

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1     aware of number 11 when you came to your  
2     conclusion on March 25 or 26, just as you  
3     were not --

4             A. I don't think I saw Trustee-11 until  
5     today.

6             Q. And I assume -- can I assume that if  
7     you had seen it when you met with Crowley  
8     at the end of March, you would have asked  
9     for a clarification?

10            A. Correct.

11            Q. You would have asked him what  
12     suspension meant?

13            A. Correct.

14            Q. The next is a letter dated February  
15     18. This one is from Mr. Schreiber, this  
16     is number twelve. This is from Mr. Schreiber  
17     who, of course, is Mr. Crowley's lawyer to  
18     Mr. Michael Cook who is the lawyer for  
19     Cerberus. It shows a copy to Dan Crowley  
20     and others.

21                                 (Trustee-12, a letter dated  
22     February 18, 2002, marked for  
23     identification.)

24     BY MR. LEVY:



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1 Q. One was produced by, according to  
2 the Bates numbers, by Crowley; the other by  
3 Cerberus, by Mr. Cook.

4 Have you looked through it?  
5 Have you ever seen this letter before  
6 today?

7 A. I don't believe so. I have not  
8 finished reading it.

9 Q. Take your time.

10 A. Already it strikes me as something  
11 that I have not seen. I have had a chance  
12 to read it. I never saw it before.

13 Q. Note that in the first paragraph,  
14 Mr. Schreiber writes, "For 2001,  
15 Mr. Crowley believes he is entitled to" --

16 MR. KIPNES: This would be  
17 the second paragraph.

18 BY MR. LEVY:

19 Q. Yes. "For 2001, Mr. Crowley  
20 believes he is entitled to an additional  
21 \$1,950,000 related to Coram's EBITDA  
22 performance." Do you see that?

23 A. Yes.

24 Q. If you had had that available when

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1     you met with Mr. Crowley and came to your  
2     conclusion that there was no conflict,  
3     might you have asked him why he was writing  
4     to Michael Cook who was Cerberus's lawyer?

5                     MR. GODNICK:  Objection.

6             This is not a letter from Crowley to  
7             Cook.  It's a letter from Crowley's  
8             attorneys and there has been no  
9             foundation that, in fact, Mr. Crowley  
10            directed his lawyers to write to  
11            Mr. Cook with regard to the subject  
12            matter of this letter.

13                    MR. LEVY:  Fair objection.

14     BY MR. LEVY:

15            Q.  Would you assume this was written by  
16            Mr. Crowley's lawyer, assuming  
17            Mr. Crowley's lawyer was instructed to  
18            write it on his behalf?  Would you have  
19            made that inquiry?

20            A.  I certainly would have talked to him  
21            about it.

22            Q.  You would have made the inquiry?

23            A.  Yes, I would have talked to him  
24            about it.

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1 Q. What would you have asked?

2 A. How can I tell? It's a hypothetical  
3 question. I didn't have the letter. I  
4 didn't talk to him. You are asking me what  
5 I would have done had I had the letter and  
6 talk to him. I don't know.

7 Q. I guess I should rephrase it. What  
8 kind of investigation might you have  
9 triggered in your mind in view of the fact  
10 that, again, assuming Crowley authorized  
11 this letter?

12 MR. KIPNES: I would object  
13 on the basis --

14 MR. LEVY: I'm not finished  
15 with --

16 BY MR. LEVY:

17 Q. That he appears, perhaps, to be  
18 asking Cerberus to pay him this money.

19 MR. KIPNES: Objection.  
20 Incomplete hypothetical.

21 MR. GODNICK: Objection.

22 MR. KIPNES: Among many  
23 other objectionable reasons.

24 THE WITNESS: I can't answer

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1 the question. I don't know what I would  
2 have done, but I suspect I would have  
3 had some discussion on this subject.

4 BY MR. LEVY:

5 Q. And in the next paragraph, this  
6 letter says, "To facilitate the possibility  
7 of settling the various disputes related to  
8 Coram's bankruptcy, Mr. Crowley has also  
9 been waiving his \$80,000 monthly retainer  
10 from Cerberus for the past two months."

11 If you had had this letter  
12 and you came to your conclusion on March 25  
13 and 6, you were pretty sure there was no  
14 conflict, would you have asked any  
15 questions about that?

16 A. I suspect, yes.

17 Q. You might have said are you going to  
18 waive it past two months, right?

19 A. I don't know what I would have said.  
20 It's pretty hard to put myself in that  
21 position. I suspect I would have  
22 questioned what this is all about.

23 Q. Do you intend to ask Mr. Crowley  
24 between now and the end of this case what

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1 was meant by this, what was meant by  
2 suspension?

3 MR. KIPNES: Objection.

4 THE WITNESS: Do I intend  
5 now to ask him?

6 Q. Yes. Or your attorney's ask him.

7 A. I certainly will discuss it with  
8 Mr. Bressler and decide a point of action.

9 Q. Is it your view at this point  
10 without having discussed it with him, that  
11 it's something you ought to look into or he  
12 ought to look into?

13 A. Yes. But I don't think it's a good  
14 idea for somebody in my position to do this  
15 kind of thing without discussion with  
16 counsel.

17 Q. No problem.

18 MR. GODNICK: Will you,  
19 Judge Adams?

20 MR. LEVY: That is an  
21 improper interruption. I will show it  
22 to him. From you, I wouldn't have  
23 expected that.

24 BY MR. LEVY:

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1 Q. At the bottom of the page,  
2 Mr. Schreiber says, "Given the financial  
3 consequences, Mr. Crowley is experiencing  
4 as a result of the ongoing dispute between  
5 the Noteholders and the Equity Committee,  
6 we will be recommending that Mr. Crowley  
7 tender his resignation unless the dispute  
8 between the Noteholders and the equity  
9 holders is resolved on or before March 1st,  
10 2002 and assurances are provided to  
11 Mr. Crowley that the contractual incentives  
12 entitlements earned by him will be promptly  
13 honored."

14 Would that have raised  
15 questions in your mind had you known about  
16 this letter when you came to the conclusion  
17 on March 25 or 26 that there probably was  
18 no conflict?

19 A. I think it would.

20 Q. Mr. Cook responded on February 25,  
21 to Mr. Schreiber on a document marked  
22 Cerberus 20084.

23 (Trustee-13, a letter dated  
24 February 25, 2002, marked for

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1 identification.)

2 BY MR. LEVY:

3 Q. You were not aware of that?

4 A. I was not.

5 Q. The next document is dated

6 February 28, 2002, number CRX 00763, a

7 letter that appears to be between Dan

8 Crowley and Steven Feinberg, but it's only

9 signed by Dan Crowley.

10 (Trustee-14, a letter dated

11 February 28, 2002, marked for

12 identification.)

13 MR. KIPNES: Attached to the

14 exhibit that you handed me, the copy, as

15 Trustee Exhibit 14, the last page of

16 which is a letter dated August 20, 2002,

17 bears Bates numbers CRX 008716. I was

18 going to ask you whether -- should we

19 just remove that?

20 MR. LEVY: The entire

21 Exhibit 14 is 763 through 767 inclusive.

22 MR. KIPNES: Okay.

23 MR. LEVY: I'm talking about

24 this exhibit.

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1 MR. KIPNES: The one you  
2 just handed me.

3 MR. LEVY: Let's see if we  
4 can get through this.

5 MR. MILLER: Was there a  
6 question about Exhibit 13?

7 MR. LEVY: The only question  
8 was had he seen it. He said no.

9 MR. MILLER: Thank you.

10 BY MR. LEVY:

11 Q. I assume Exhibit 14, the  
12 February 28th letter, you have never seen  
13 that before today?

14 A. I did not.

15 Q. If you had seen that at the time you  
16 concluded on March 25 and 26 that there was  
17 no conflict, would that have raised  
18 questions in your mind?

19 A. I would have questioned it.

20 Q. You would have questioned -- would  
21 you have questioned -- the last sentence  
22 is, "The suspension of obligations will end  
23 on March 31st." You would have  
24 questioned --



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1           A. That seems to me to be the same  
2     phraseology as a number of previous  
3     exhibits you have shown me covering  
4     January, February and March and I would  
5     have asked about them collectively.

6           Q. Right. You probably would have  
7     asked why Feinberg didn't sign it, is that  
8     a fair assumption?

9           A. I didn't hear the question.

10          Q. You probably would have asked why  
11     Feinberg did not sign it?

12          A. Probably.

13                       MR. BEATIE: You have not  
14     figured out how to ask that question  
15     yet.

16     BY MR. LEVY:

17          Q. The next document is a letter  
18     addressed to you dated March 11, 2002. It  
19     has Bates numbers CRX 60, 61 and 62 and it  
20     is signed, or there is a signature block  
21     for Dan Crowley.

22                       MR. MILLER: What is the  
23     document?

24                       MR. LEVY: It's a letter,

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1 addressed to --

2 MR. KIPNES: It's addressed  
3 to Judge Adams. The date of the letter  
4 is March 26, 2000.

5 MR. LEVY: March 11.

6 MR. KIPNES: I'm looking at  
7 what I was just handed. It says  
8 March 26. That's the wrong one.

9 MR. LEVY: 60 and 61 and 62.

10 (Trustee-15, a letter dated  
11 March 11, 2002, with attachments, marked  
12 for identification.)

13 MR. LEVY: Let me, before  
14 anybody points it out, there is a word  
15 written on the top which was not on the  
16 original. It was a dread faxing error.  
17 It should not be part of what is on  
18 there. I ask you to simply strike  
19 through whatever that says. It's not  
20 part of the exhibit. That is my  
21 handwriting there.

22 BY MR. LEVY:

23 Q. Do you remember receiving that  
24 letter?

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1 A. That is my recollection, yes.

2 Q. Let me ask you whether, referring,  
3 essentially, to the first three pages --

4 A. That's all I have looked at.

5 Q. That's fine. Would you -- I  
6 characterize this letter as a "puffing"  
7 letter. Would you agree with that?

8 MR. GODNICK: Objection to  
9 the form of the question.

10 THE WITNESS: I never  
11 characterized it.

12 Q. Did it occur to you when you read  
13 this -- did you ever discuss this letter  
14 with Crowley?

15 A. I can't say sitting here that I did  
16 discuss it with Crowley. I don't have any  
17 recollection of discussing this letter with  
18 Mr. Crowley. Much of what is in it, we  
19 discussed. But, I don't think we discussed  
20 it as a letter.

21 Q. Did it occur to you that Mr. Crowley  
22 spent a lot of time talking about the  
23 advice he got in the Goldin report, but  
24 that he never mentioned Judge Walrath's

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1 opinion and her comments about his conflict?  
2 Does that strike you as odd?

3 MR. GODNICK: Objection to  
4 the characterization. The question is  
5 contradicted by the language of the  
6 letter itself.

7 THE WITNESS: I didn't draw  
8 any conclusion one way or the other from  
9 the letter.

10 BY MR. LEVY:

11 Q. Did you ever have a discussion with  
12 Crowley in which he talked about Goldin and  
13 how Goldin's report had exonerated him?

14 A. I don't think we had a discussion.  
15 I think he mentioned that.

16 Q. When he did, or at anytime did you  
17 say to him what about what Judge Walrath  
18 said about your conflict?

19 A. I can't remember asking him in the  
20 same context that you are raising. We did  
21 talk about the conflicts, as I told you at  
22 the first meeting. I don't think -- he may  
23 have specifically mentioned Judge Walrath.  
24 I can't remember that. That is not why I

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1 was there.

2 Q. He says in the second page in the  
3 next-to-the-last paragraph, "However after  
4 the second plan was denied, I formally  
5 suspended my contractual relationship with  
6 Cerberus."

7 When you met with him, or at  
8 anytime between getting this letter  
9 March 11 or 12 and March 25 and 26, did you  
10 ask him what he meant by suspended?

11 A. I did not. By the time I was out  
12 there, I asked him a question that really  
13 superseded any such nomenclature. I asked  
14 him if he had any relationship.

15 Q. What did he tell you?

16 A. I thought he said he had terminated  
17 any and all such relationships except as to  
18 the monies that they owed him, which he was  
19 still claiming and then he went into the  
20 discussion that from time to time they  
21 asked him to evaluate members of a board of  
22 directors or business opportunities and  
23 that's when I got into the question which,  
24 to me, was the more important issue, are

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1     you being compensated? No. Does it have  
2     anything to do with the type of business  
3     that Coram is in? No. Do you do that on  
4     company time? No. I don't want to repeat  
5     all my testimony.

6           Q. When he told you that he was not  
7     being compensated for this work, did you  
8     ask him why he was doing free work for  
9     Cerberus?

10          A. I didn't ask him. He told me what  
11     he thought; that it was important for him  
12     to continue his relationship because of the  
13     large claim he had.

14          Q. His relationship with Cerberus?

15          A. Yes. I got the impression, I don't  
16     know whether he said it or not, that he  
17     didn't want to do anything to disturb that  
18     relationship if it jeopardized this big  
19     claim that he had, this money claim.

20          Q. How much was the claim?

21          A. I don't recall what it was. I know  
22     it was a substantial amount of money.

23          Q. Did he say how much it was and you  
24     just don't remember?

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1           A. I can't tell you. He probably  
2     mentioned some figure. I don't recall what  
3     it was.

4           Q. Did you feel at that point in time,  
5     March, April, did you feel that Mr. Crowley  
6     was being completely open with you about  
7     his relations and discussions with Cerberus?

8           A. Well, now that you have shown me  
9     some of these documents, perhaps to be  
10    completely open, I guess he should have  
11    shown me copies of those. He did not, to  
12    my recollection. I don't want to  
13    characterize what he was doing. I don't do  
14    that.

15          Q. Let me ask you this: If you knew,  
16    had known at that time that he and his  
17    lawyer were deliberately hiding from you  
18    what was going on between Cerberus and  
19    Crowley, would that have affected your  
20    conclusion as to whether there was a  
21    conflict?

22                   MR. KIPNES: Objection to  
23    the form of the question.

24                   MR. BEATIE: It's already

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1           been asked at least twice, anyway.

2                       THE WITNESS: I will try to  
3           answer it. I did not know that they  
4           were hiding anything. I don't know  
5           whether they were hiding. That is a  
6           conclusion that somebody ought to draw.  
7           I would have preferred he made  
8           everything available.

9                       Would that have affected me?  
10          I guess anything affects a person of  
11          intelligence. How much? I can't tell  
12          you here without dreaming up a scenario  
13          that I just didn't have.

14          Q. You can assume hypothetically, if  
15          you will, that Crowley's lawyer and  
16          Cerberus's lawyer deliberately planned to  
17          conceal from you their negotiations and  
18          their disagreements about their  
19          relationship. Would that have adversely  
20          affected your view of Crowley and, perhaps,  
21          affected your view that there probably was  
22          no conflict?

23                       MR. GODNICK: Objection.

24          Objection among other grounds that that



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1 is a offensive, offensive hypothetical  
2 to me because I am Cerberus's lawyer.

3 THE WITNESS: If I confront  
4 anyone who, I think, is conspiring to  
5 deprive me of information, my view  
6 toward that person would, obviously, be  
7 affected. But it's so hypothetical, I  
8 can't answer the question.

9 BY MR. LEVY:

10 Q. Let's mark this as Exhibit Number  
11 16.

12 (Trustee-16, a memo from  
13 Michael Cook to Scott Schreiber dated  
14 April 5, 2002, marked for  
15 identification.)

16 BY MR. LEVY:

17 Q. The first E-mail appears on the  
18 bottom and it was sent on April 5 of 2002  
19 from Scott Schreiber to Michael Cook. The  
20 second, which is a response, looks like one  
21 minute later from Michael Cook to Scott  
22 Schreiber. Take a look at that again.

23 A. "I'd appreciate it if you would keep  
24 our conversations re terminating Dan's

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1 contract between us and our clients for  
2 now. No other attorneys nor the Trustee  
3 need to be part of those conversations  
4 until Dan and Cerberus decide that's the  
5 way to go."

6 Q. That was to Cook. And how did Cook  
7 respond, looking at the top?

8 A. "No problem. Has there been a leak?  
9 I know of none."

10 MR. KIPNES: I would object.

11 It misstates the record.

12 THE WITNESS: I'm not sure  
13 what the question is that you want me to  
14 answer.

15 Q. I assume you have never seen this?

16 A. I never saw that document nor the  
17 original.

18 Q. You never saw that before?

19 A. No.

20 Q. Did you know on about April 5 that  
21 Cererus and Crowley was still negotiating  
22 about terminating their relationship?

23 A. I can't say I did or did not. I  
24 knew that Crowley still had these claims

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1     which he told me about and he had also told  
2     me that he had been called upon from time  
3     to time to give this advice to Cerberus. I  
4     didn't think they had a relationship aside  
5     from those two things, so I couldn't know  
6     that they were trying to terminate the  
7     relationship.

8             Q. Do you recognize -- do you  
9     understand this exhibit to show that, first  
10    of all, they had not yet terminated their  
11    relationship?

12            A. That's what it seems to suggest.

13            Q. And, second of all, that they didn't  
14    want you to know the status of those  
15    discussions?

16            A. Well, it says "No other attorneys  
17    nor the Trustee need to be part of these  
18    conversations." That's from Scott to  
19    Michael Cook.

20            Q. Michael answers --

21                   MR. KIPNES: I think we have  
22    already read it into the record.

23                   THE WITNESS: It's so  
24    cryptic. I'm not sure I understand what

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1           they were driving at because he had  
2           talked to me by now about what that  
3           relationship was. This is April 5. I  
4           don't know what they are talking about.

5       BY MR. LEVY:

6           Q. By April 5, you were under the  
7           impression that the relationship had been  
8           terminated?

9           A. Yes, except for these two points.

10          Q. If you had known that it hadn't been  
11          terminated, that might have affected your  
12          decision as to whether a conflict existed,  
13          is that correct?

14          A. It could have affected it.

15          Q. Did there come a time when you  
16          realized that notwithstanding what you then  
17          thought about April 5 that, in fact, the  
18          relationship had not yet been terminated?

19          A. I don't think so, subject to those  
20          two things that we have been talking about.

21                       (Trustee-17, a letter dated  
22          April 10, 2002, marked for  
23          identification.

24       BY MR. LEVY:

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1 Q. This is a letter addressed to you.  
2 This is signed by Dan Crowley. It bears  
3 numbers Trustee 4203 through 4211 inclusive.  
4 You received this letter?

5 A. Did I receive it? I'm sure I did.

6 Q. Look at the second page of the  
7 letter, 4204. We have Mr. Crowley saying  
8 to you, "We have some timely response  
9 indicating when you wish to proceed on open  
10 items. Some of them are rather urgent.  
11 The items on which we need direction  
12 are" -- then, if you go down to number 6,  
13 "The terms for termination of the Crowley/  
14 Cerberus contract." Do you see that?

15 A. I see that.

16 Q. Would you now agree with me that at  
17 least as of April 10 or whenever you  
18 received this letter, you knew that the  
19 Crowley/Cerberus contract had not been  
20 terminated?

21 MR GODNICK: Objection.

22 THE WITNESS: I thought this  
23 referred to their claim, Crowley's claim  
24 against Cerberus because that's what we

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1           talked about. I still don't know that  
2           that is not the case.

3       BY MR. LEVY:

4           Q. Do you know whether at that point --  
5       strike that.

6                       Do you have a recollection  
7       now that that's what you thought?

8           A. That's my recollection, yes.

9           Q. And the next item he wants to talk  
10       about is the amendment of the Crowley  
11       employment contract with Coram?

12          A. Right.

13          Q. How did he then -- what amendment  
14       did Crowley then indicate to you that he  
15       wanted?

16          A. I don't recall right now, but I  
17       think it had something to do with bonuses.  
18       That's my recollection.

19          Q. Did it concern you in determining  
20       whether there was a conflict? That you had  
21       a situation where Crowley's claiming money  
22       from Cerberus and he is doing some work  
23       free for them that that might somehow bias  
24       him towards acting in Cerberus's interest

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1 so that he could solve that problem?

2 A. I was aware that was a possibility.

3 Therefore, we had to play close attention,

4 which we did.

5 Q. What did you do to -- did you ever

6 say to him, to Crowley, well, aren't you

7 conflicted by the fact that you are doing

8 this free work?

9 A. I did discuss that.

10 Q. What did he say?

11 A. He didn't think that there was any

12 conflict because that had nothing to do

13 with Coram. He was not being compensated

14 and not doing anything during his working

15 hours. Quite frankly, I think he was right

16 if those were the facts. Now, if there are

17 other facts that I don't know about, that

18 is a different story.

19 Q. You said you were concerned that

20 there be some bias towards Cerberus because

21 of what you described as a large claim and

22 the fact that he was doing free work. How

23 did he explain, if he did, how did he

24 explain that away to your satisfaction?

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1 MR. KIPNES: Misstates the  
2 record. Asked and answered. Go ahead.

3 THE WITNESS: I just don't  
4 see the connection, quite frankly. I  
5 don't see the conflict there.

6 He was being employed by me  
7 to run this company as effectively as he  
8 could. Everyone would benefit: The  
9 creditors, the Noteholders, the equity  
10 holders. That's what I was concerned  
11 about, as I have said over and over  
12 again. If I thought that the  
13 performance was slipping, I would have  
14 done something. I don't see how the  
15 equity holders or the Noteholders would  
16 be affected by a lot of the things that  
17 you are asking about. Maybe I'm myopic.

18 BY MR. LEVY:

19 Q. In your mind, was the issue whether  
20 what I think is a conflict was affecting  
21 his work or was it whether there was a  
22 conflict?

23 A. Two separate issues. Is there a  
24 conflict? And if there is, is it affecting



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1 his work? If I took his statements at face  
2 value, I didn't see a conflict. If I  
3 looked at his performance, I didn't see how  
4 even a conflict could affect the people  
5 that I was appointed to protect.

6 Q. You did take his statements at face  
7 value?

8 A. I did.

9 Q. Exhibit 18 is a portion of Coram's  
10 report to the Securities and Exchange  
11 Commission on Form 10-K. That is the  
12 annual report for the fiscal year ended  
13 December 31st, 2001. It was filed on April  
14 15, 2002.

15 (Trustee-18, a Form 10-K,  
16 marked for identification.)

17 BY MR. LEVY:

18 Q. You were the trustee on April 15  
19 when this was filed. Did you participate  
20 in the preparation of the annual report on  
21 Form 10-K?

22 A. I believe I did.

23 Q. And you approved it?

24 A. I think I did. I can look to see.

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1 MR. KIPNES: You don't have  
2 the entire form.

3 MR. LEVY: I don't. Do you  
4 want the entire one?

5 MR. KIPNES: No. I know  
6 that the period of time covered by this  
7 report the witness was not the Trustee  
8 or had any role whatever with Coram.

9 BY MR. LEVY:

10 Q. If you can look at the second page,  
11 the last line beginning "Mr. Crowley." Did  
12 you, before you approved this report, ask  
13 anyone what they meant by suspended as  
14 distinguished from terminated?

15 A. No, I did not.

16 MR. KIPNES: Objection to  
17 the question. Assumes a fact not in  
18 evidence.

19 MR. LEVY: Which one?

20 MR. KIPNES: That he  
21 approved the report.

22 BY MR. LEVY:

23 Q. Did you approve the filing of this  
24 report?

1           A. I don't have any recollection of  
2     doing so.

3           Q. You did see this report at some  
4     point? You participated in it?

5           A. I probably did. But I can't say,  
6     sitting here, that I recall participating  
7     in it.

8           Q. Here we are, April 15. Was it a  
9     concern to you in deciding the issue of  
10    whether there was a conflict that the  
11    parties had not terminated or, at least,  
12    they were telling the investing public they  
13    had not terminated their contract, but had  
14    merely suspended it in this case only  
15    through April 12?

16          A. The month in question. I realize  
17    or, at least, I thought what they were  
18    doing is doing this on a month-to-month  
19    basis because of Crowley's claims against  
20    Cereberus. I may have been wrong, but that  
21    was my impression.

22          Q. You didn't ask him, did you, at that  
23    time?

24          A. On the date of that report, no.

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1 Q. On or about --

2 MR. BEATIE: Objection. Why  
3 are you asking that question? He said  
4 that was his impression. He didn't say  
5 he heard it, so you don't have to ask  
6 him if he asked it.

7 BY MR. LEVY:

8 Q. On or about the date --

9 MR. BEATIE: Unless you want  
10 to prolong this thing unnecessarily and  
11 behave in an intentional, improper  
12 conduct, as you have, in my opinion, all  
13 day long and it won't happen on Friday,  
14 I guarantee you.

15 MR. LEVY: I would agree  
16 with you.

17 BY MR. LEVY:

18 Q. Mr. Adams, where did you get the  
19 impression that they were suspending this  
20 on a month-to-month basis? Where did that  
21 impression come from? Did someone tell you  
22 that?

23 A. I can't tell you. I don't know. I  
24 had that impression that -- I guess it was

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1 from the first meeting I had with him when  
2 he said that he still had this claim. Even  
3 though he had terminated all relationships,  
4 he still had this claim, this substantial  
5 claim against Cerberus. But, that was my  
6 impression.

7 Q. Did you ever ask Crowley why he  
8 thought it was an open item for you to deal  
9 with the terms of the termination of his  
10 contract with Cerberus?

11 A. No, I did not.

12 Q. Did you ever authorize Mr. Bressler  
13 to tell Mr. Crowley something on the order  
14 of you guys have smart lawyers and you  
15 ought to be able to figure out how you can  
16 get paid?

17 A. I can't remember any language like  
18 that, no. I may have said to Mr. Bressler,  
19 look, that's a matter between Crowley and  
20 his former contract partner. I don't think  
21 we should be using the creditors' money to  
22 probe that sort of thing.

23 Q. Even though there was still some  
24 reservation that might have caused some

1 bias on Crowley's part?

2 A. The amount of bias would be so  
3 minimal.

4 Q. How do you know that?

5 A. It's a question of where I wanted --  
6 I'm repeating now, and I am going to repeat  
7 to the bankruptcy judge and to the Trustee  
8 what my job was. Your question would seem  
9 to indicate that my principal job was to  
10 investigate the relationship between  
11 Crowley and Cerberus. You may be right, I  
12 did not understand that to be my job. The  
13 Trustee never mentioned it to me. When I  
14 was before the judge, she never mentioned  
15 it to me. I was told that I was supposed  
16 to maximize the assets and to minimize the  
17 liabilities and get this company out of  
18 bankruptcy and I was putting most of my  
19 emphasis on that.

20 Today, you have gone into  
21 that subject very, very little and talked  
22 about this relationship and made it appear  
23 that I was being negligent in not following  
24 up this connection between these two

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1 parties. And I have said to you and I will  
2 say it again as clearly as I can, that if  
3 that was my assignment, I'm prepared to  
4 step down. I was not hired to be a  
5 detective or an investigator. I don't want  
6 that job. I wanted the job as a Trustee.  
7 You will have to get somebody else to  
8 investigate that if that's what you are  
9 after.

10 MR. GODNICK: Would you mark  
11 that testimony, Mr. Reporter.

12 BY MR. LEVY:

13 Q. Are you aware, Mr. Adams, that  
14 sometime around the beginning of May,  
15 Mr. Feinberg invited Mr. Crowley to come to  
16 New York to have a dinner to talk about  
17 resolving the differences?

18 A. I am not, no.

19 Q. Well, hypothetically, if during or  
20 following that dinner Mr. Crowley demanded  
21 that Cerberus pay him the difference  
22 between some \$11,000,000.00 and the amount  
23 he ultimately gets from the Coram estate,  
24 would that have affected your decision as

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1 to whether a conflict existed?

2 MR. GODNICK: Before you  
3 answer, I would object. It's my  
4 understanding that the question is based  
5 on a document that Mr. Crowley claims to  
6 be privileged. I certainly can't stop  
7 you from asking the question. I think  
8 this is an inappropriate line of  
9 questions.

10 MR. KIPNES: It's the same  
11 question.

12 THE WITNESS: That is a  
13 hypothetical question. I didn't know of  
14 the fact. I have not addressed the  
15 fact. Asking me here for the first time  
16 whether I would have considered it, I  
17 can't answer that question.

18 BY MR. LEVY:

19 Q. You still don't know that that's a  
20 fact?

21 A. I don't know it.

22 Q. I will show you a document marked  
23 CRX 00063, 4 and 5. It was provided by  
24 Coram dated May 6, 2002. It has been



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1 redacted or, at least, there are two stamps  
2 on it that indicate that portions of it  
3 have been redacted, presumably, by  
4 Mr. Crowley's lawyers, though I don't know.  
5 I know that's the way we got it from  
6 Mr. Crowley.

7 (Trustee-19, a letter dated  
8 May 6, 2002, marked for identification.)

9 BY MR. LEVY:

10 Q. Take your time and read this  
11 carefully.

12 MR. KIPNES: Did you say  
13 this document was provided by Coram?

14 MR. LEVY: I will make the  
15 correction.

16 MR. GODNICK: I have a  
17 question, which is whether a motion was  
18 filed? As I understand, one was going  
19 to be with regard to this document.

20 MS. KRUGMAN: I don't know  
21 where they came down on that. I'm  
22 sitting in on this deposition. I'm the  
23 wrong person, sorry.

24 MR. LEVY: I want to say

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1           that I have here a Blackberry which gets  
2           instant docket information and it  
3           "ain't" been filed.

4                       THE WITNESS: I have not  
5           read it carefully. I have skimmed it.

6   BY MR. LEVY:

7           Q. I would ask you to, please. I would  
8           ask you to read the document.

9           A. I will not read the whole thing  
10          carefully. If you want me to read a  
11          sentence or paragraph, fine.

12          Q. You can keep that. Have you ever  
13          seen that document before this moment?

14          A. No.

15          Q. Did your counsel show it to you in  
16          preparation for this deposition?

17          A. No.

18          Q. Do its contents surprise you?

19                       MR. GODNICK: Objection to  
20          the form of the question.

21                       THE WITNESS: I don't know  
22          that I'm surprised. I don't know what  
23          they mean. I don't know what the  
24          context is. I don't know these people.

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1 I don't know Steve Feinberg.

2 BY MR. LEVY:

3 Q. Do you know who he is?

4 A. I have heard that he is the CEO or  
5 some official of Cerberus. I don't know  
6 the man. I don't know whether he is a  
7 lawyer. I don't know anything about the  
8 man. How could I be surprised of a copy of  
9 a document not signed? The only thing that  
10 concerns me in the document is the last  
11 paragraph on page 1, because that refers to  
12 me. "Mr. Bressler has told me that he/  
13 Trustee don't want to give us/me advice  
14 about ending the contract or my getting  
15 paid." That's true. I wouldn't give them  
16 any advice. "He also said that we have  
17 smart lawyers." I don't think I ever used  
18 that expression. "He's sure that they can  
19 figure out how they can get me paid. He  
20 has no objection to my being paid for work  
21 done or for terming the contract."

22 Q. Did you authorize Bressler to say  
23 that? Bressler is being quoted here, not  
24 you.

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1           A. I don't know. If he said it, he  
2       said it. I don't know anything about it.

3                   MR. GODNICK: I don't know  
4       if the letter purports to quote Barry as  
5       opposed to simply characterizing or  
6       paraphrasing what the writer believes or  
7       wanted to say that Barry said.

8                   THE WITNESS: I may have  
9       said I'm not going to get involved in  
10      any contract dispute between Crowley and  
11      Cerberus. That is none of my business.  
12      Let them work it out. They have  
13      lawyers. I may have said that. I have  
14      enough to do. I'm trying to get this  
15      company out of bankruptcy. That's my  
16      job.

17      BY MR. LEVY:

18           Q. Might it have concerned you if, as  
19      part of that contract dispute, Cerberus had  
20      said we've got to meet at Coram, I will pay  
21      you some more? Did that ever occur to you?

22                   MR. GODNICK: Objection.

23                   THE WITNESS: Did anyone say  
24      anything about that? You are conjuring

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1 up a parade of horrors. I was not  
2 contemplating any such thing. I was  
3 trying to concentrate on the job that I  
4 assumed and I was asked to take over.

5 BY MR. LEVY:

6 Q. And not to investigate anything like  
7 this?

8 MR. GODNICK: Objection to  
9 the form.

10 MS. KRUGMAN: Objection.

11 MR. KIPNES: Objection.

12 MR. MILLER: Objection.

13 BY MR. LEVY:

14 Q. Sir?

15 A. I'm not going to answer that question.

16 Q. Why?

17 A. I believe I'm not answering that  
18 last question.

19 Q. Tell me why, sir.

20 A. Pardon?

21 Q. Tell me why.

22 A. Because I think it's offensive.

23 Q. You said you didn't know these  
24 people. These people are Feinberg, who you

1 have explained, and Dan Crowley whose name  
2 appear.

3 A. I didn't refer to Dan Crowley. I  
4 talked about Mr. Feinberg and talked about  
5 whether he is the CEO. Never met the man.  
6 I know nothing about him.

7 Q. Okay. Would you look at the  
8 paragraph at the top of page, second page,  
9 page 64.

10 A. The one that is partly stricken out?

11 Q. Yes. I don't know who did that.

12 A. Well, I don't know either.

13 Q. I don't either. I wasn't going to  
14 ask you that.

15 A. I don't know Friedman.

16 Q. Friedman, sir, was the attorney for  
17 the debtor. You must have met him at some  
18 point.

19 A. I never met Mr. Friedman, to my  
20 knowledge. Maybe if I saw his full name  
21 on. . .

22 Q. David Friedman represented the  
23 debtor up until the point when you became  
24 the Trustee and no longer does. Okay?

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1           A. I don't believe I ever met the  
2 gentleman.

3                   MR. MILLER: Objection.

4           That draws a conclusion that that may  
5 exist.

6                   MR. LEVY: I have no quarrel  
7 with that. I would stipulate to it.

8                   MR. MILLER: Why did you say  
9 it?

10                   MR. KIPNES: Is there a  
11 question?

12 BY MR. LEVY:

13           Q. Here we have Mr. Crowley,  
14 apparently, writing here, "I know I didn't  
15 have to hire Friedman just because you  
16 recommended him. I did it on my own. I  
17 didn't have to recite the answers that  
18 Friedman gave me to say in court."

19                   Does that suggest to you,  
20 based on your experience, that, perhaps, he  
21 is telling Feinberg that he wasn't quite  
22 telling the truth in court?

23                   MR. KIPNES: Objection.

24 BY MR. LEVY:

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1 Q. But, rather, was reciting what  
2 Friedman had told him to do?

3 MR. KIPNES: Objection to  
4 the form of the question. Calls for  
5 speculation.

6 THE WITNESS: I don't know  
7 what answers he gave. I think I just  
8 would be guessing and speculating. That  
9 is of no value.

10 BY MR. LEVY:

11 Q. Given your experience, sir, your  
12 impression of that sentence, what does it  
13 mean to you? What is your understanding of  
14 it, knowing no more than what is on this  
15 paper?

16 MR. KIPNES: Wait a minute.  
17 You are asking him just to read this  
18 sentence totally out of context by  
19 itself and give you his impression of  
20 what the author of that sentence meant?

21 MR. LEVY: I reject your  
22 characterization of my question. I take  
23 it, it's an objection to the form?

24 THE WITNESS: I can't answer



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1           that question. I don't know what they  
2           were talking about. I don't know the  
3           people. I don't know what the context  
4           is.

5       BY MR. LEVY:

6           Q. Who are the people? You know one of  
7           the people, like the guy who wrote it,  
8           Mr. Crowley.

9           A. I'm not sure. It's not signed.

10          Q. Do you doubt that Crowley wrote it?

11          A. I don't know. I have no -- you put  
12          a document in front of me. I have never  
13          seen it before. It's marked "Draft,  
14          Redacted." It's written to somebody that I  
15          have never met, don't know, and it has  
16          various places redacted or stricken and you  
17          are asking me what is my opinion about a  
18          couple of sentences. I can't do it. I  
19          don't have that ability.

20          Q. Is it significant to you that it  
21          came from Mr. Crowley's file?.

22                       MR. GODNICK: Significant in  
23          what respect?

24                       THE WITNESS: Of some

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1           significance is the fact that it came  
2           out of Mr. Crowley's file.

3       BY MR. LEVY:

4           Q. Doesn't that suggest to you that,  
5       perhaps, he wrote it?

6           A. I don't know.

7           Q. What significance does it have?

8           A. Just what you said. It came out of  
9       his files. It seems to me he is talking to  
10      him about the same thing he talked to me  
11      about, assuming that it's Crowley; that he  
12      was trying to get Cerberus to pay him what  
13      he thought Cerberus owed him for past  
14      service, which he told me about.

15          Q. Look at the next page, if you would.

16          A. "I expect that you will honor the  
17      commitment."

18          Q. Read it to yourself.

19          A. Yes.

20          Q. Assuming that Mr. Crowley wrote  
21      that --

22                      MR. KIPNES: That's a very  
23      large assumption. Go ahead.

24                      MR. LEVY: Why did you have